are joined or tied together', thus tending to suggest some sort of collusion on his part with the prosecution. In yet another ground of appeal he says that the learned Judge had improperly and in a manner prejudicial to the defence and without justification intimidated a defence witness Tan Chin Boon (DW11) when he said 'I am 52 years old. Don't try to cheat me. Who do you think you are trying to bluff?' or words to that effect.

The remark in connection with Abdullah Ambik could perhaps have been passed casually to relieve the tedium of an extended trial and could not in any way have affected his judgment and we can see no ground for imputing impropriety and prejudice in this context. With regard to Tan Chin Boon the learned Judge was obviously taken aback when this witness in giving evidence as to his purchase of some fried chicken suddenly and without being asked produced the receipt for the purchase from his pocket which even Mr. Jagjit Singh who was examining him was not aware of. The Public Prosecutor has explained the situation in which the learned Judge made this remark which clearly reflected his annoyance at the way the receipt was produced but he then accepted the witness's explanation and admitted the receipt in evidence. This again could not have coloured his judgment in any way and cannot in our view give rise to any suggestion that he was biased.

It is of course the duty of counsel to act fearlessly and with all the force and vigour at their disposal in the interest of the cause they represent but wholly within the bounds of propriety and courtesy in the discharge of their duties as officers of the court but they must equally remember that in the discharge of their duties they must judiciously use the right and privilege of appearing as such in court and not abuse it (per Abdoolcader, J., in *Re Kumaraendran; an Advocate & Solicitor*[65]). If it can be clearly shown that a justiciar was prejudiced or biased or otherwise conducted himself in an improper manner inconsonant with accepted standards in the administration of justice, then it will certainly be open for the point to be taken. We can however see no justification whatsoever in respect of the matters raised before us by counsel for the vituperative nature of the language in which the petition of appeal has been couched and the contumelious suggestions that have been put forward in his address to us which has dragged the learned Judge into the arena of the conflict and subjected him to a personal attack with a virtual suggestion of complicity on his part. We consider this line taken ill-chosen, mischievous and contemptuous in the circumstances. The appellants have not been denied a fair trial and the remarks that were subject to attack, though perhaps injudicious, were bereft of any sinister connotation against the background of the circumstances in which they were made, and could not and did not affect the proceedings or cause in any way any miscarriage of justice. We trust that this admonition will suffice to caution against any recurrence of a broadside of this nature grounded on blatantly inane innuendoes without any justification or basis merely in order to advance a cause.

*Appeal of 1st appellant dismissed.*
*Appeal of 2nd appellant allowed.*

Solicitors: *Jagjit Singh & Co.; Manjeet Singh Dhillon & Co.*

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## YAAKOB BIN MOHAMAD & ANOR. v. SINTAT RENT A CAR SERVICE (M) SDN. BHD. & ANOR.

[O.C.J. (George J.) November 25, 1982]
[Kuantan – Civil Suit No. 133 of 1976]

*Road Traffic – Fatal motor accident in rural area – Motorists to be conscious of possibility of rural folk using road in manner one would not expect people in urban areas to do.*

*Damages – Quantum – Fatal accident – Healthy 60 year old farmer – Damages at $4,200 at 30% liability.*

*Bailment – Hired car in road accident – Owner of car retaining no control nor right to exercise control over car – Owner not liable.*

The facts showed that one Robert Chen was driving his car along the said road. Ahead of him was the junction. It was then when another motor car driven by the 2nd defendant overtook Robert Chen and then moved into the lane for traffic to Pekan. There was then a collision between the motor car driven by the 2nd defendant and the cyclist who was fatally injured. The court found that the cyclist had turned from the left of the road into the path of the 2nd defendant's motor car without giving the 2nd defendant any reasonable opportunity of avoiding the collision. The deceased cyclist was a 60 year old farmer.

That part of the Kuantan/Pekan road where the accident happened was a straight road.

The 2nd defendant was driving a car hired from the 1st defendants.

**Held**: (1) motorists approaching cross-roads particularly in a rural area should be conscious of the possibility of the rural folk using the road in a manner one would not expect people in urban areas to do;

(2) the 2nd defendant need not be a perfectionist but an ordinary but prudent driver, to have had in mind the possibility that as he overtook Robert Chen and made for the junction the cyclist who would have been by that time at the junction too might want to enter the area of of the cross-roads on the right. If that anticipation had been there the 2nd defendant would have desisted from over-taking Robert Chen just before the junction;

(3) the substantial blame for the accident falls on the cyclist but there was contributory negligence on the 2nd defendant's part. The cyclist was 70% to blame for the accident and the defendant 30%. General Damages at $4,200 at 30% and Special Damages agreed at $260.20 at 30% were awarded to the plaintiff;

(4) the claim against the 1st defendant should be dismissed with costs. To make the 1st defendant liable for the negligence of the 2nd defendant it has to be shown that the driver was with the owner's consent driving the car on the owner's business or for the owner's purposes. In this case, there was a bailment of the 1st defendant's vehicle to the 2nd defendant, the 1st defendant retaining neither control nor the right to exercise any control over it.

*Case referred to:*

(1) *Ormrod & Anor.* v. *Crosville Motor Services Ltd. & Anor.* [1953] 2 All E.R. 753.

CIVIL SUIT.

*Mahindar Singh* for the plaintiffs.
*Vinayak Pradhan* for the defendants.

*Cur. Adv. Vult.*

**George J.**: On the afternoon of the November 2, 1973 Robert Chen was driving his motor car along the Kuantan/Pekan road travelling towards Pekan. Ahead of him was a junction. A cyclist also travelling in the direction of Pekan and keeping to about a foot from the left grass verge of the road was also approaching that junction. It was in this situation that another motor car driven by the 2nd defendant overtook Robert Chen and then moved into the lane for traffic to Pekan. About then there was a collision between the motor car driven by the 2nd defendant and the cyclist who was fatally injured.

The sketch plan of the scene of the accident which is an agreed document shows that the collision took place at the junction of the Kuantan/Pekan Road and the two minor roads leading to Pahang Tua and Kampong Sawah respectively.

Robert Chen testified that he had seen the cyclist who all of a sudden, without giving any signal, turned to the right and into the path of the 2nd Defendant's car which swerved to the right but collided with the cyclist.

The 2nd Defendant's Police Report which is the first document in the agreed bundle provides confirmation to Robert Chen's version of how the accident happened. In the Police Report the 2nd Defendant stated that the cyclist had suddenly turned to the right "without giving any sign or looking back."

In my judgment what the Police found at the scene as shown in the sketch plan is consistent with the contention that the collision occurred as the cyclist was moving from the left of the road to the right. The point of impact must have been at about the point "C". That the 2nd Defendant's car moved towards the right (in a vain attempt to avoid the collision) is also confirmed by the position of the vehicle as shown in the sketch plan.

On the evidence available I found that the cyclist had turned from the left of the road into the path of the 2nd Defendant's motor car without giving the 2nd Defendant any reasonable opportunity of avoiding the collision.

That part of the Kuantan/Pekan road where the accident happened is a straight road. There were wooden buildings on both sides of the road. It must have been obvious to the 2nd Defendant that he was approaching the cross-roads. If the 2nd Defendant had been keeping a proper look-out he would have noticed the cyclist ahead of Robert Chen, and would have realised that the cyclist and he would reach the junction at about the same time.

Now this was a rural area. Motorists approaching cross-roads particularly in a rural area should be conscious of the possibility of the rural folk using the road in a manner one would not expect people in urban areas to do.

To my mind the 2nd Defendant need not be a perfectionist but an ordinary but prudent driver, to have had in mind the possibility that as he overtook Robert Chen and made for the junction that cyclist who would have been by that time at the junction too might want to enter the arm of the cross-roads on the right. In my judgment if that anticipation had been there the 2nd Defendant would have desisted from overtaking Robert Chen just before the junction. The substantial blame for the accident falls on the cyclist but there was contributory negligence on the part of the 2nd Defendant. I find the cyclist 70% to blame for the accident and the 2nd Defendant 30%.

The deceased was apparently a healthy 60 year-old farmer. It will not be unfair to apply a multiplication of 7 years on a loss of dependency of $200 a month to get the amount of 100% for the loss of dependency,30% of which is $4,200/-. 30% of the agreed special damages is $260.70.

The claim against the 1st Defendant should be dismissed with costs. To make the 1st Defendant liable for the negligence of the 2nd Defendant it has to be shown that the driver was with the owner's consent driving the car on the owner's business or for the owner's purposes. In *Ormrod's case*(1) Denning L.J., as he then was, said at page 755,

"The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friends, or anyone else. If it is being used wholly or partly on the owner's business or for the owner's purposes, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern; see *Hewitt* v. *Bonvin.*"

The 1st Defendant had hired out the motor car to the 2nd Defendant.

There was a bailment of the 1st Defendant's vehicle to the 2nd defendant, the 1st Defendant retaining neither control nor the right to exercise any control over it.

There will be judgment for the Plaintiff against the 2nd Defendant in the sum of $4,460.70 together with costs as taxed at High Court scale. There will be interest on the judgment sum at 8% per annum from date of service of the writ on the 2nd Defendant until date of judgment and thereafter until realisation at 8% per annum.

The claim against the 1st Defendant is dismissed with costs as taxed at High Court scale.

*Order accordingly.*

Solicitors: *Mahindar & Co.; Skrine & Co.*

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## TAN CHE SING v. BUKIT SENORANG LUMBER INDUSTRIES SDN. BHD.

**[O.C.J. (George J.) November, 1982]**
**[Kuantan – Civil Suit No. 68 of 1977]**

*Damages – Hand crushed by motor of conveyor belt – Agreed general and special damages at $10,000 at 100% liability.*

The plaintiff was a bark peeling contractor employed by the defendants. His work place was in the peeling section somewhere near the lower end of the conveyor belt. The waste conveyor belt was not functioning due to the accumulation of fallen waste material between the rollers and the belt causing the whole system to be jammed. On seeing the lack of success on the part of D.W.1 and one Roslan to get the belt moving, the plaintiff got up to the motor by walking up the conveyor belt. His intention was to use his hands to tug the "vee" belt that connected the motor to the conveyor belt to free the stuck conveyor belt. As the plaintiff was pulling at the "vee" belt, the motor was switched on by D.W.1. The "vee" belt moved in a clockwise direction and took with it the plaintiff's hand causing it to be crushed.

**Held** (1) it was highly improbable that D.W.1 could have avoided seeing the plaintiff walk up the conveyor belt. D.W. 1 was therefore negligent in failing to ascertain that the plaintiff was out of harm's way;

(2) the fact that the motor was not fenced is not relevant. The act of the plaintiff pulling at the "vee" belt was a deliberate act and even if there had been a fence or guard he would have done so;

(3) the defendants were vicariously liable for the negligence of the servant D.W.1 to the extent of 60% and the contributory negligence of the plaintiff at 40%;

**(4) Agreed quantum was $10,000 for both general and special damage. Judgment for the plaintiff was in the sum of $6,000 and costs.**

CIVIL SUIT.

*C. Sri Kumar* for the plaintiff.
*M.C. Ruthrapathy* for the defendants.

*Cur. Adv. Vult.*

**George J.**: The waste conveyor belt in the Defendant's plywood factory at Batu 3, Jalan Karak, Mentakab was not functioning. This happens from time to time apparently as a result of accumulation of waste falling off the conveyor belt. The accumulation of such fallen waste results in the waste material impeding the movement of the belt on its rollers. Apparently some of the accumulated waste could also get between the rollers and the belt causing the whole system to be jammed.

One end of the conveyor belt was almost at